

PATENT
540606-2001**REMARKS**

Reconsideration and withdrawal of the rejections of this application, and consideration and entry of this paper are respectfully requested, as this paper places the application in condition for allowance, or in better condition for appeal, without raising any new issues, requiring any further search or examination, or adding claims in excess of those cancelled. And the Examiner is thanked for the courtesies extended during the telephone calls prior to the filing of this paper. The undersigned has requested and herein again requests an interview with the Examiner in the event there is any issue which is an impediment to allowance.

The invention of the present application relates to, *inter alia*, the use by hunters of odor-reducing garments for concealment from big game. The garments are made of odor-absorbing and antimicrobial fabrics that comprise semi-dull polyester fibers and acetate fibers having blended therein an antimicrobial agent, wherein the acetate fiber is at least about 25% by weight of the fabric, and the polyester and acetate fibers are entwined.

I. STATUS OF THE CLAIMS

Claims 15-22 are pending in the application. Claims 1-14 have been canceled, and claims 15-22 added without prejudice, admission, surrender of subject matter, or intention of creating estoppel as to equivalents.

Independent claim 15 is narrower than the broadest of the cancelled original claims, and claims 16-22 directly or indirectly depend from claim 15. It is respectfully submitted that cancellation of claims 1-14 and addition of claims 15-22 place the application in condition for allowance, do not introduce new matter, and do not require further searching or examination. Accordingly, consideration and entry of this paper are respectfully requested.

It is submitted that the claims and remarks herewith and the claims as originally presented are in full compliance with the requirements of 35 U.S.C. §§101, 102, 103 and 112. The addition of claims 15-22, and remarks concerning these claims, were not made for the purpose of patentability within the meaning of 35 U.S.C. §§101, 102, 103 or 112, but rather for clarification and to round out the scope of protection to which the Applicant is entitled.

PATENT
540606-2001**II. THE §112, FIRST PARAGRAPH, REJECTION IS OVERCOME**

Claims 1-11 were rejected under 35 U.S.C. §112, first paragraph, as allegedly lacking written description. Cancellation of claims 1-11 and addition of claims drawn to odor-reducing fabrics and garments render this rejection moot. Accordingly, reconsideration and withdrawal of the 35 U.S.C. §112, first paragraph, rejection are requested.

III. THE §102 REJECTIONS ARE OVERCOME

Claims 1-11 were rejected under 35 U.S.C. §102 as allegedly anticipated by Marier et al. (US 5,994,245; "Marier"), Denesuk et al. (US 6,196,156; "Denesuk '156"), and Denesuk et al. (US 6,240,879; "Denesuk '879").

A two-prong inquiry must be satisfied in order for an anticipation rejection to stand. First, the prior art reference must contain all of the elements of the claimed invention. *See Lewmar Marine Inc. v. Bariant Inc.*, 3 U.S.P.Q.2d 1766 (Fed. Cir. 1987). Second, the prior art must contain an enabling disclosure. *See Chester v. Miller*, 15 U.S.P.Q.2d 1333, 1336 (Fed. Cir. 1990).

Independent claim 15, the sole independent claim, is drawn to an odor-reducing fabric comprising:

- A polyester fiber;
- an acetate fiber having blended therein an antimicrobial agent;

wherein the acetate fiber is at least about 25% by weight of the fabric, and the polyester and acetate fibers are entwined.

Marier relates to insoles comprising fibrous mats. The Office Action (at 3) asserts that the fibrous mats can contain polyester fibers (column 3, lines 26-28) and acetate fibers co-extruded with the antimicrobial agent Triclosan (column 3, lines 44-50). Marier does not recite or suggest specific amounts of acetate fibers.

The Office Action (at 3) also asserts that Marier discloses that the fibers can be needled together (column 3, lines 60-62). It is respectfully submitted that the "conventional process of carding and then needling the mixture of fibers" (column 3, lines 61-62) recited by Marier, and which is not defined further, refers not to the formation of entwined fibers, but to the formation

PATENT
540606-2001

of fibrous mats. In this context, carding refers to forming a mat from a mixture of fibers, and needling refers to strengthening the mat by puncturing it with barbed needles to draw fibers perpendicular to the predominant orientation of the fibers in the mat. See, for example, US 5,520,916, column 3, lines 21-27 and 33-41, which relates to formation of fibrous webs by carding and strengthening the webs by needling. Marier, therefore, does not relate to, teach, or suggest entwined fibers, but rather Marier involves mats of polyester and acetate fibers. Accordingly, Marier fails to teach or suggest the instant invention.

Denesuk '156 relates to pet bedding having fabric coverings. The Office Action (at 5) asserts that the coverings can contain polyester fibers and acetate fibers coextruded with Triclosan (column 10, lines 18-27), and that fiber mixtures can be interlocked by needling (column 12, lines 54-56). As is the case for Marier, however, the needling process referred in Denesuk '156 relates to strengthening non-woven webs or batts (column 12, lines 50-56), not to entwined fibers. Moreover, Denesuk '156 does not recite, teach, or suggest specific amounts of acetate fibers as in the instant claims. Clearly, therefore, Denesuk '156 fails to teach or suggest the instant invention.

Denesuk '879 relates to pet toys containing antimicrobial agents. The Office Action (at 7) asserts that the non-woven fibrous battings in the pet toys can contain polyester fibers and acetate fibers (column 3, lines 32-38), and antimicrobial agents such as Triclosan applied to the fibers (column 3, lines 32-38 and column 9, lines 41-58), and that the fibers can be interlocked by needling (column 11, lines 51-53). In contrast to the claimed subject matter of the present application, Denesuk '879 does not disclose or suggest acetate fiber amounts of at least about 25% by weight, and fails to teach or suggest acetate fibers having the antimicrobial agent blended therein. Moreover, as in Marier and Denesuk '156, needling in Denesuk '879 relates to strengthening non-woven webs (column 11, lines 54-59). Thus, Denesuk '879 fails to teach or suggest entwined fibers.

Furthermore, Marier, Denesuk '156, and Denesuk '879 do not disclose or suggest the use of semi-dull polyester fibers. Marier and Denesuk '879 do not disclose or suggest woven fabrics. Denesuk '879 does not disclose or suggest acetate fibers having an antimicrobial agent blended therein. And none of these cited documents teaches or suggests a method for preventing detection by an animal comprising wearing the odor-reducing hunting garment of the instant invention.

PATENT
540606-2001

In view of the foregoing, it is respectfully submitted that the cited references do not disclose or suggest each and every limitation of the claims of the present application. Accordingly, reconsideration and withdrawal of the anticipation rejections are respectfully requested.

IV. THE §103 REJECTIONS ARE OVERCOME

Claims 1-11 were rejected under 35 U.S.C. §103 as allegedly being rendered obvious by Marier, Denesuk '156, and Denesuk '879.

In order to ground an obviousness rejection, there must be some teaching that would have provided the necessary incentive or motivation for modifying the reference's teaching. *In re Laskowski*, 12 U.S.P.Q. 2d 1397, 1399 (Fed. Cir. 1989); *In re Obukowitz*, 27 U.S.P.Q. 2d 1063 (B.P.A.I. 1993). Further, "obvious to try" is not the standard under 35 U.S.C. §103. *In re Fine*, 5 U.S.P.Q. 2d 1596, 1599 (Fed. Cir. 1988). And as stated by the Court in *In re Fritch*, 23 U.S.P.Q. 2d 1780, 1783-1784 (Fed. Cir. 1992): "The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggests the desirability of the modification." Also, for the obviousness rejection to be proper, both the suggestion of the claimed invention and the expectation of success must be founded in the prior art, and not Applicants' disclosure. *In re Dow*, 5 U.S.P.Q. 2d 1529, 1531 (Fed. Cir. 1988).

Applicant has solved the problem of concealing hunters from big game by developing odor-reducing materials that can be used to make hunting garments. Because big game can detect human-associated odors with high sensitivity, the solution to this problem involved the development of fabrics containing higher amounts of antimicrobial acetate fibers than are typically used in odor-reducing materials such as insoles.

As discussed above, there are a number of significant differences between the claimed subject matter of the present application and Marier, Denesuk '156, and Denesuk '879. Most importantly, the cited references do not relate to entwined fibers, do not teach, suggest, or motivate the use of high amounts of acetate fibers, and do not teach or suggest the claimed method.

The Office Action (at 10) asserts that modifying the cited references to arrive at an amount of acetate at least about 25% by weight is motivated by the requirement for high amounts

PATENT
540606-2001

of acetate in order to increase the odor-reducing properties of fabrics containing the acetate fibers. However, the weakness of acetate fibers teaches away from their use in high amounts. Applicant has solved the interrelated problems of odor reduction and strength by inventing fabrics comprising high amounts of antimicrobial acetate fibers entwined with odor-absorbing polyester fibers. The antimicrobial and odor-absorbing properties of the entwined fibers result in unexpectedly superior odor reduction, and the combination of acetate fibers with polyester fibers results in entwined fibers suitable for producing fabrics.

Therefore, the claimed subject matter of the present application is not obvious in view of Marier, Denesuk '156, and Denesuk '879, and there is no motivation, teaching, or suggestion in these documents to modify their teachings to arrive at the instant invention, especially as all of the cited documents are silent on entwined fibers and the high amount of acetate fibers, as well as the claimed method. Accordingly, reconsideration and withdrawal of the obviousness rejections are respectfully requested.

CONCLUSION

In view of the amendments and remarks made herewith, the application is in condition for allowance. Consideration and entry of this paper, favorable reconsideration of the application, reconsideration and withdrawal of the rejections of the application, and prompt issuance of a Notice of Allowance are earnestly solicited.

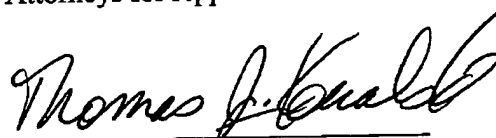
PATENT
540606-2001**REQUEST FOR INTERVIEW**

If any issue remains as an impediment to allowance, a telephonic interview is respectfully requested prior to issuance of any paper other than a Notice of Allowance, and the Examiner is respectfully requested to contact the undersigned to arrange a mutually convenient time and manner therefor, in accordance with the undersigned's previous telephonic request for an interview.

Respectfully submitted,

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